



Appeal Decision

Hearing held on 8 June 2022

Site visit made on 9 June 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 9 November 2022

Appeal Ref: APP/N1730/W/21/3281915

Church Farm West, Bramshill Road, Bramshill, Hook, RG27 0PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Slavchev of EU Plants Ltd against the decision of Hart District Council.
 - The application Ref: 21/00858/FUL, dated 23 March 2021, was refused by notice dated 15 July 2021.
 - The development proposed is described as the 'permanent siting of six seasonal worker accommodation units'.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Hart District Council against the appellant, EU Plants Ltd. This application is the subject of a separate decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published on the 20 July 2021, subsequent to the application being determined by the Council. The parties have provided comment on the revised Framework and the implications of it for their case within their written submissions for this appeal and I have had regard to the revised Framework in my determination of this appeal.
4. The Council's second reason for refusal refers to the appeal site being located within 400 metres of the Heath Brow and Bourley and Long Valley Sites of Special Scientific Interest (SSSI) which forms part of the Thames Basin Heaths Special Protection Area (TBHSPA). However, it was confirmed by the Council at the hearing that the reference to Heath Brow and Bourley and Long Valley SSSI was an error. The correct site is the Bramshill SSSI. Given that the Bramshill SSSI also forms part of the TBHSPA and the parties have provided comment having regard to the effect of the appeal scheme on the Bramshill SSSI, I am satisfied that no-one would be unduly prejudiced by my consideration of the appeal having regard to the Bramshill SSSI as part of the TBHSPA.

Procedural Matter

5. Notwithstanding that the appellant indicated during the hearing that the static caravans (the "units") had previously been occupied throughout the full year

with no break in occupation, the application before me is for the permanent siting of six units at the appeal site to be occupied by seasonal workers only from December to February and April to October in each year. Outside of these periods, during the months of March and November, the units are to be kept in situ in storage use and they would remain unoccupied. To determine the appeal based upon the appellant's evidence of there being year-long occupancy without any break in occupation would have altered the appeal scheme before me. It is not clear that this formed part of the application, or that interested people's views have been sought. I therefore cannot be satisfied that no party would be prejudiced by my consideration of the extended use of the accommodation. I have determined the appeal on the basis of what was originally applied for.

6. It was put to me that the determination of this appeal should be undertaken retrospectively. Whilst at the time of my site visit, I observed there to be six units in situ each with its own utility shed, insofar as is related to the operational development part of the appeal, the appeal could be considered to be retrospective. However, given the evidence concerning the use of those units without a break in occupancy, I take the view that as a whole the appeal scheme before me is not entirely retrospective.

Main Issue

7. The main issue is whether there is an essential need for the dwellings to accommodate a rural worker.

Reasons

Policy background

8. The appeal site comprises a large commercial horticulture unit which is located outside of any settlement boundary. Consequently, for the purposes of applying planning policy, it is considered to be located within the countryside.
9. Policy SS1 of the Hart Local Plan: Strategy and Sites 2016-2032 (HLP) (April 2020) directs that development will be focussed within defined settlements, on previously developed land in sustainable locations and on allocated sites. Outside of these areas, development within the countryside is restricted to certain categories of development as set out within HLP Policy NBE1. With regards to this policy, subparagraph (a) is permissive of housing that meets the proven essential need of a rural worker to live permanently at or near their place of work. The Framework¹ has similar aims insofar as it allows for isolated homes in the countryside where there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
10. The Planning Practice Guidance (PPG) chapter *Housing needs of different groups* sets out some considerations which could be taken into account when assessing the need for isolated homes in the countryside for essential rural workers. Among other things, this includes, evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural, forestry or similar land-based rural enterprise (for instance, where farm animals or agricultural processes require on-site attention 24-hours a day and where otherwise there would be a risk to

¹ Paragraph 80 National Planning Policy Framework

human or animal health or from crime, or to deal quickly with emergencies that could cause serious loss of crops or products) and, whether the provision of an additional dwelling on site is essential for the continued viability of a farming business through the farm succession process.

11. The PPG also makes it clear that employment on an assembly or food packing line, or the need to accommodate seasonal workers, will not generally be sufficient to justify isolated rural dwellings².
12. The appeal site comprises a horticulture unit of some 24.8 hectares of land predominantly used for the propagation and supply of fruit canes to the soft fruit industry. The enterprise has continued to generate a profit since the business commenced in 2005 and as such there is no dispute between the parties that the business is established and will continue to remain viable for the foreseeable future.

Essential need

13. The enterprise is predominantly engaged in the growing of fruit canes for which, the appellant explained that these plants tend to be at different stages of their lifecycle and consequently, they have varying needs in terms of their irrigation and nutrient requirements. The watering and feeding operation of the business is computerised to take account of their differing needs. Despite this system being computerised, the system is not sufficiently sophisticated to detect when there is a problem with the irrigation system such as a blocked 'dripper'. These can readily fail due to the settlement of sediment in the pipes. In the absence of adequate irrigation and given the relatively small size of their pot, a plant will only survive for a short period of time which the appellant estimates to be in the region of two hours. The time period can be considerably shorter on a warm day.
14. To avoid dehydration and the subsequent loss of a plant, the drip feeders, of which there are a considerable number are checked regularly together with the moisture levels of the soil within each individual pot. It is evidently a labour intensive and time-consuming process. However, given that it is not usual to irrigate plants overnight, the task is mainly undertaken during daylight hours. Overnight watering is infrequent and where it does occur it rarely requires more than one individual to undertake checks of the irrigation system. Instances of power shortage are limited. To protect against any interruption the business has emergency generators available to ensure continuity of the irrigation process. Overall, the evidence leads me to the view that there are very limited instances whereby on-site attendance is required 24 hours a day to justify it is necessary for a rural worker to live at the premises to ensure the effective operation of irrigation of the enterprise.
15. The appellant gave detailed explanation concerning the effect of inclement weather on the operation of the business with particular regard to the longevity of the polytunnel structures which are in situ all year round. Poly tunnels are critical to preventing damage to the plants and are an expensive asset of the business which can become damaged due to excessive wind and snow fall.
16. The appellant gave detailed explanation of the process of using additional ropes, anchoring and instances of cutting weak areas of the covering plastic

² PPG ID 67-010-20190722

material to avoid greater damage during instances of high wind. The structures are susceptible to collapse under the weight of settled snow. In the most serious cases, damage to these structures could materially affect the functioning of the business and impact upon its ongoing viability. I accept that during adverse weather events any intervention to reduce damage to the polytunnels is heavily reliant upon human input, with the appellant explaining that such tasks usually require between 8-10 individuals and occasionally this necessitates additional help from staff at the nearby Manor Farm.

17. Nevertheless, the prevalence of advance weather warnings enables the early identification of instances of likely adverse weather and aids the planning of a response to deal with any emergency situation that may arise as a consequence. Given that inclement weather is more frequently experienced during the autumn and winter seasons, which could be expected to coincide at a time when the units would be unoccupied, the evidence is unclear as to how similar incidents are discharged during these periods. Whilst dealing with these types of emergency incidents may result in a worker being engaged for longer hours than normal and outside of regular working hours, in my view, I consider that a worker does not need to be on site at most times to deal with emergencies arising from inclement weather. Given the likely seasonal occurrence of such emergency situations, I consider that such a requirement could be accommodated without providing the dwellings that are sought and such circumstances fail to demonstrate a necessity for a rural worker to live at the appeal site at most times for this purpose.
18. In terms of crime, notwithstanding the presence of some fencing and a gated and locked entrance, instances of crime and antisocial behaviour have been experienced by the business. However, such instances have been limited in number during recent years and, on the infrequent occasions where access through the gate has been forced, this was generally to gain access to a neighbouring property. Occurrences of fly-tipping have ceased within the last five years.
19. I accept that the stationing of a static caravan near to the site's access together with the presence of seasonal workers may act as a deterrent. However, there is little evidence before me to demonstrate that this is the only solution to this problem. The appellant has also installed a number of other deterrents including, dummy surveillance cameras, signage, lighting and motion sensors and there is little evidence before me to suggest that the physical presence of people is the only deterrent to criminal activity. Moreover, I note that the physical presence of workers had little effect in deterring the theft of equipment belonging to a contractor employed to construct the on-site reservoir.
20. Additionally, whilst I note that crime against farming premises in rural areas is not uncommon, other alternative options for preventing crime have not been fully explored by the appellant, such as the use of CCTV surveillance, alarms monitored remotely from accommodation off-site and the services of a security company. There is no evidence before me as to the likely cost of these alternatives nor any evidence to substantiate the appellant's view that these would be cost prohibitive to the business nor that they do not offer a timely and effective response.

21. On the evidence before me, I am not satisfied that there exists an essential need for a person(s) to be at the site for the purposes of carrying out horticulture, irrigation or the prevention of damage by adverse weather or as a result of criminal activity.

Alternative accommodation

22. It forms part of the appellant's case that in order to attract individuals to work at the farm, the business must be able to offer housing as an incentive. The appellant described a reliance upon labour from overseas within the UK farming industry and noted the difficulty in attracting local workers due to the physical nature of the work and the payment of the national minimum wage.
23. Reference has been made by the Council to the availability of alternative dwellings elsewhere that could meet the operational requirements of the horticulture enterprise.
24. With regards to Manor Farm, at a distance of approximately 4 miles, it is reasonably close to the appeal site. However, a similar situation also exists at Manor Farm with there being no existing accommodation available for the use of Church Farm West workers. Milletts Farm is located at a much greater distance from the appeal site and its location would therefore be impractical in providing an alternative source of accommodation. However, the appeal site lies within a reasonable distance of a number of settlements. The Council referred to there being a range of properties within the area that are available for sale or rent, which concurred with my observations of the surrounding area at the time of my site visit.
25. Given the distances involved, a short journey by bicycle or motor vehicle would be necessary. Whilst some worker's may not be able to drive, or may choose not to do so, or do not own a vehicle, there is little substantive evidence before me to demonstrate that this would be the case for all workers. Moreover, as an alternative, shared journeys comprising larger private hire vehicles, such as a minibus, or a similar service operated by the business itself could be utilised. No compelling reason has been advanced to explain why trips by bicycle would not be possible.
26. In terms of nearby rental properties, it was put to me that workers would find it difficult to obtain rental tenancies due to their seasonal working arrangement. This may well be the case, however, there is little evidence to demonstrate that the business itself would be unable to secure a residential tenancy with a view to sub-letting the accommodation directly to its workers. Furthermore, the appellant explained his intention at the hearing that the business would not resort to renting properties on behalf of its' workers as there was no desire to expend money to third parties. Similarly, there was no intention to acquire the freehold or leasehold of any residential property. Although reference was made to the likely cost of such an acquisition and its anticipated impact on the finances of the business, there was no suitable analysis of the likely costs associated with the rental or purchase of a property or a number of properties, nor has any assessment upon the viability of the business been undertaken. The requirement to obtain a licence for a house in multiple occupation was cited, but no credible explanation given as to why such a licence could not be achieved.

27. I acknowledge that the availability of on-site static caravans provides convenience and given the low-income nature of the work, the workers would likely be unable to meet the cost of a private rental. However, there is little evidence before me to justify that there is no existing accommodation in the area that could be used for the purposes concerned with the business nor that the provision of alternative accommodation would damage the financial sustainability of the business and limit its future growth. The appellant's assertion that other agricultural businesses do not provide off-site accommodation does not provide adequate justification for the appeal scheme.
28. Therefore, whilst it would be convenient for rural workers to live on the site, I do not consider that the requirements of HLP Policy NBE1 have been met as the essential need of the business could be fulfilled by other properties within the local area.

Overall conclusion

29. Taking everything into account and having regard to the evidence and issues before me, the appeal scheme fails to demonstrate that there is an essential need for a rural workers' dwelling. Furthermore, even if I were minded to accept that an essential need had been established, which is not the case here, the appellant has also failed to demonstrate that there is no other existing accommodation in the area that could not satisfy the essential need of the business. Consequently, the appeal scheme would fail to comply with the provisions of HLP Policies SD1, SS1 and NBE1 which among other things, seek to focus development within defined settlements and, outside of these areas, in areas within the countryside, is restrictive of development to certain types in order to safeguard the intrinsic character and beauty of the countryside. Similarly, it would fail to accord with the provisions of the Framework insofar as it aims to avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work.

Other Matters

30. Reference has been made by the appellant to a fallback position arising under Schedule 2, Part 5, Class A of the General Permitted Development Order (2015) as amended, together with the Caravan Sites and Control of Development Act 1960, Schedule 1, paragraphs 2 to 10. Whilst these provisions are permissive of development comprising the use of land as a caravan site of agricultural land, this permitted development right is limited to accommodation during a particular season of a person or persons employed in farming operations and therefore when the seasonal use ceases, the caravan must be removed. It is not for me to determine as part of this appeal whether a proposal would benefit from permitted development rights, however, even if I were minded to find that it would be open to the appellant to engage these provisions, they are not completely analogous to the appeal scheme before me which seeks to retain the units in situ whilst being unoccupied and in storage use. A comparison is therefore of limited relevance in this instance.
31. My attention has been drawn to the demand for high quality plants, an increased demand for the supply of soft fruit and the introduction of different crops and varieties being propagated by the business in order to meet the demand of customers and distributors which in turn has satisfied the shopping habits of the general public. I am mindful that efficiency and viability are

important to ensure the enterprise operates competitively for which the Framework is supportive of building a strong, competitive economy and supporting a prosperous rural economy. These are matters that weigh moderately in favour of the appeal scheme.

32. No adverse harm has been identified with regards to the visual impact of the scheme on the character and appearance of the area and the surrounding countryside. However, the absence of harm is a neutral matter that weighs neither for nor against the proposal.
33. I have taken into account the views of third parties and note that there is some support for the appeal scheme. Even so, the presence of favourable support does not overcome the conflict with the development plan in this instance.
34. The appeal site is partly located within the zone of influence of the TBHSPA. The proximity of this European site means that determination of the application should be undertaken with regard to the requirements of the Habitats Regulations 2017. Mitigation would be required in respect of the increased recreational disturbance and urbanisation influence on the integrity of habitats sites. However, as the appeal is failing because of the harm which has been identified in relation to the main issue, it is not necessary for me to undertake an appropriate assessment nor to reach a conclusion on any mitigation. The development is not going ahead and therefore any harm to the SPA would not occur. Therefore, I do not need to give any further consideration to this matter in this appeal.

Conclusion

35. For the reasons given above and having regard to all other matters raised, I find that the proposed development would conflict with the development plan and the material considerations weighing in favour of the appeal scheme in this case do not outweigh this conflict. Therefore, the appeal should be dismissed.

E Brownless

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Martinez Principal Planner, Hart District Council

Ms Aimee Harris Senior Planner, Hart District Council

FOR THE APPELLANT:

Mr Slavchev Owner, EU Plants Ltd

Mr Tsvetomir Manager, EU Plants Ltd

Miss Olivia Wojniak Reading Agricultural Consultants